IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/03/2004

CORAM

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

W.P. No.37805 of 2003
and
W.P.M.P.No.45924 OF 2003
W.V.M.P.No.137 OF 2004

K.P.Perumal ... Petitioner

-Vs-

1.The Tamil Nadu Industrial
Investment Corporation Ltd.,
rep.by its Managing Director,
Anna Salai, Nandanam,
Chennai-600 035.

2.Andrew Swamy ... Respondents

For petitioners : Mr.N.G.R.Prasad
for M/s.Row & Reddy

For respondent 1 : Mr.A.L.Somayaji,
Senior Counsel,
for M/s.Aiyar & Dolia

Petition under Article 226 of The Constitution of India, praying for issuance of a writ of certiorari, as stated therein.

:O R D E R

This Writ Petition has been filed for issuance of a writ of certiorari, to call for the records of the first respondent relating to Order No.TIIC/Admn/A6/2003-2004 dated 16.12.2003 and quash the same.
2. The case of the petitioner is that he is holding the post of Deputy General Manager in the first respondent Corporation and he is the senior most among the Deputy General Managers fit to be promoted to the post of General Manager. It is the further case of the petitioner that on 27.02.2001, he requested that his seniority as a DGM should be restored and he be promoted as General Manager, as per the earlier Government Orders, but the the first respondent has not given the said benefit but promoted his junior D.Sayee Baba as General Manager; in order to deprive him of his promotion to

the post of General Manager, foisted false charges against him regarding the alleged false claim of travelling allowance during his tours to various places; that he relied upon a freelance agent to get the tickets and the management found that the claim was inadmissible, which was also disallowed; on 07.04.2003, he was issued a charge memo and the first respondent appointed the second respondent as the Enquiry Officer; after some adjournments, the enquiry was conducted on 28.10.2003 from 10.30 am to 07.3 0 p.m., as a result of which, he developed spinal problems; that the petitioner was on medical leave from 01-11-2003 to 02-12-2003 and the medical leave was extended till 01-01-2004 after referring the petitioner to Medical Board and its recommendations. In the meantime, the enquiry was adjourned to 03-11-2003 and 07-11-2003, on which date it was closed, though the Management was aware that the petitioner was on medical leave. ON 14-11-2003, in his absence, the petitioner was directed to submit his written arguments. Since the petitioner was on medical leave, he was not aware of the same. On 27-11-2003, the

enquiry office found the petitioner guilty of all the charges and submitted his report. Based on the said report, the impugned order was passed by the first respondent.

3. The case of the first respondent is that the petitioner is the first person who made false claims in the history of the Corporation; there is no proof that the petitioner has relied upon a freelance agent to obtain the tickets; the petitioner went on extending the leave to avoid attending the enquiry; merely because the petitioner was on leave, it does not preclude him from submitting his written submission and that on receipt of the enquiry officer's report, the Corporation forwarded a copy of the same to the petitioner, directing him to submit his explanation. The averment that on 28-10-2003 the enquiry went on from 10.30 a.m. to 07.30 p.m. is denied. Thereafter, the enquiry which was posted to 03-11-2003 could not be conducted since the petitioner sent a letter to the General Manager on 30-10-2003 requesting for one day casual leave on 31-10-2003. The petitioner thereafter sent a letter dated 01-11-2003 requesting leave on medical ground from 03-11-2003 to 02-12-2003. The petitioner was again referred to the Medical Board, Salem for their opinion. As per the advise of the medical board, the petitioner should have returned for duty on 02-01 -2004. On 03-11-2003, again, the enquiry was adjourned to 07-11-2003 since the petitioner did not appear. On 14-11-2003, the petitioner was directed to submit his written submission, if any by 14-11-2003. Since the petitioner has not responded, the enquiry officer submitted his report on 27-11-2003 as the medical leave granted to the petitioner no way precluded the petitioner from submitting his written submissions.

4. It is the basic fundamental of an enquiry that where the charges involving consequences of any major penalty, there must be a fair play in action. The disciplinary enquiry is not like a criminal trial. The general statement normally made in respect of departmental enquiry is that the decision reached by the enquiry officer on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that Rules and procedures. While so, it is the bounden duty of the enquiry officer to afford reasonable opportunity to the delinquent.

Followed (Surath Chandra Chakravarty Vs. State of West Bengal) AIR 1971 SC 752.

5. His Lordship Justice Venkatarama Iyer has observed in Union of India Vs. T.R. Verma - AIR 1957 SC 882 "stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them".

6. In the case on hand, the petitioner was on medical leave, that too the same was extended on the recommendation of the medical board till 01-01-2004. During that period, the enquiry was adjourned and closed resulting in filing of enquiry report hastily. It cannot be stated that the petitioner deliberately absent for the enquiry during the relevant period.

7. It is pointed out by Mr. N.G.R. Prasad, learned counsel appearing for the petitioner, the petitioner intended to lead evidence on his side but the same was denied. As such, the enquiry cannot be said to have complied with the element of principles of natural justice as the delinquent has not been afforded reasonable opportunity to lead evidence.

8. In the decision rendered in (R.C. Sharma Vs. Union of India AIR 1 976 SC 2037, the Honourable Supreme Court held thus:-

"The question whether the appellant was given a reasonable opportunity to lead evidence and to be heard or not is largely a question of fact. It is only when an opportunity is denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice that it could vitiate the whole departmental trial. Prejudice to the Government servant resulting from an alleged violation of a rule must be proved."

9. It is evident from the above that the enquiry officer concluded the enquiry without taking into consideration of the leave granted to the petitioner on the recommendation of the medical board, which would amount to deprivation of sufficient opportunity to the petitioner. Hence, the report of the enquiry officer is set aside and the consequential proceedings of the 1st respondent is also set aside. The enquiry officer is directed to hold the enquiry from the stage it was closed. The petitioner is directed to appear before the enquiry officer in the next hearing to be fixed by the enquiry officer. The petitioner is further directed to extend his full co-operation for completion of the enquiry. The enquiry officer is directed to complete the enquiry within a period of two months from the date of receipt of a copy of this order.

The writ petition is ordered on the above terms. No costs. Connected WPMP and WVMP are closed.

rsh

Index : Yes
Internet : Yes

To
The Managing Director,
Tamil Nadu Industrial
Investment Corporation Ltd.,
Anna Salai, Nandanam,